Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1996

PERRY S. SHERS,

Petitioner,

VS.

CITY AND COUNTY OF SAN FRANCISCO,
a corporation municipal and political;

FLOYD L. FARANO, RECEIVER

Respondents.

On Petition for Writ of Certiorari
to the Supreme Court of the State of California

PETITION FOR WRIT OF CERTIORARI

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28 pp

QUESTIONS PRESENTED

These questions are presented within the following context: the dismissal of multiple State appeals for alleged defects in opening briefs that by long standing and previous practice had been ignored and in one instance here contrary to State Rule and the Court of Appeal's opinion and own precedent by a three member panel with two former as to the trial Court and sometimes as to the appellate Court colleagues and/or friends of the "trial" judge, who summarily, in the absence of any affidavits or other evidence, ordered the sale for 1/6 of specially appraised value and 1/3 of assessed value to a secret purchaser without competitive upset bidding as required by State statute (Calif. Code of Civil Proc., § 568.5) for whom, in lieu of disclosure or cross - examination, the trial judge vouched of petitioner's residence and his and his late mother's apartment house and the assessment of "expenses" for receiverships where no work of improvement or management was done, but usually free bids for work were allegedly solicited (never produced), for the entire "sale proceeds" of $106,000 (for an occupied 16 apt plus store plus 10 garage/pkg space steel reinforced concrete Victorian style building in downtown San Francisco) plus as deficiencies $100,000 paid previous by the City Atty to obtain the silence of the first receiver who had threatened an embarrassing lawsuit plus $33,000 additional for the second receiver and his son and his business partners. All of this occurred after the City Atty's office had been instrumental in procuring the arrest of petitioner and City Atty Renne had urged the Police to continue to prosecute petitioner for allegely threatening the life of the "trial" judge, his son, and the receiver and his family (charges dismissed), Deputy City Attys continued to remind orally and in filings the trial judge of the charges and urge his above acts as therefore appropriate, even though petitoner objected thereto, petitioner repeatedly pointed out that by operation of law various appeal stays barring sale had arisen, an alternative bidder bid $300,000 and later $500,000, petitioner informed the "trial" Court that the persons with the ultimate authority in the City and County of San Francisco to settle this matter with Defendants/Appellants/Petitioner had done so and in doing so had overridden the City Atty and her Deputies and the facts showing conflicts of interest of and failures to represent her clients by the City Atty and her Deputies, and they had admitted the same.

1. Do the *Liljeberg* and its progeny and other related precedents [*Liljeberg vs. Health Services Acquisition Corp.* (1988) 108 S.Ct.2194, 100L.Ed2d 855; applicability to States: *Tumey vs.Ohio* (1927) 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749; *Aetna Life Ins. Co. vs. Lavoie* (1986) 475 U.S. 813, 106 S.Ct. 1580, 89 L.Ed.2d 823; *Liljeberg, supra.*;*Catchpole vs. Brannon* (First District, Div. Two,

1995) 36 CA4th 237] of this Court and extending such regarding disqualification of judges giving the appearance of inability to afford a fair hearing of matters apply to to State appellate justices?

2. Do those precedents continue to hold in full force or were they properly narrowed by the same panel of the same State Court of Appeal (as applied implicitly herein) in *Linney vs. Turpin* (1996) 42 Cal.App.4th 763; 49 Cal.Rptr.2d 813?

3. Should those precedents apply when appellate Justices are considering appeals dealing with alleged misconduct of their sometimes colleague, and when the appeals provoke intemperate language in the opinion giving the appearance of bias or prejudice precluding a fair hearing, do the precedents require disqualification/recusal?

4. Was it a violation of procedural due process, as guaranteed by the Fourteenth Amendment of the US Constitution, to dismiss under a State precedent allowing for such after a second transgression of Court rules, but recognizing higher authority proscribing such for a first transgression, for first transgressions appeals without reaching the merits?

5. Was it a violation of procedural due process, as guaranteed by the Fourteenth Amendment of the US Constitution, to enforce rules which all parties inearlier appeals had ignored without warning and had not been enforced for some time regularly or consistently, especially when the State precedents favor deciding cases on their merits?

6. Do Due Process, including Common (Natural) Law, or generalized *Liljeberg* principles bar an attorney from representing a position favoring himself and contrary to the position and interest of his client and require his disqualification/recusal and is an appearance of such possible conflict sufficient to so require? [being considered by the Calif. Supreme Ct.].

7. Does a city attorney or other governmental attorney, while prosecuting a civil case, especially one that is quasi-criminal or may result in the loss or impairment of property or liberty, owe a this Court's *U.S. vs. Berger / Brady vs. Maryland* (1963) 373 US 83 precedent type of duty to disclose exculpatory evidence, and generally of honesty and fair play to the Courts, of which it is an officer, and to its opponents?

8. Does a common or other law principle, especially as guaranteed by the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, bar for a reasonable time an attorney from practicing

before a Court by whom he was employed (as this Court recognizes explicitly by its Rule 7) or before a Court on behalf of the Court (as in the case of a receiver's attorney - the receiver being an employee of the Court) when he recently had been employed by one of the parties before the Court?

9. Similarly, are close relatives, as attorneys for a party, barred from urging and obtaining the employment by the Court or its employees in litigation (receivers) of their close relatives?

10. Does the disqualification precedent of this Court remain good law despite its being ignored by the Calif. Courts [Where judge has "become personally embroiled' and his behavior "precluded the atmosphere which should ... dominate...", judge should request assignment of another judge [decided in context of criminal contempt charge - see Gunther, 1970, pg. 315] *Offutt vs. US* (1954) 348 US 11 applying rule of *Cooke vs. U.S.* , 276 U.S. 517 (1924)?

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IN THE
SUPREME COURT OF THE UNITED STATES
FEBRUARY TERM, 1997

Petitioner respectfully prays that a writ of certiorari issue to review the final collateral orders having the force of judgments below.

OPINIONS BELOW

The opinion of the highest State Court (Court of Appeal, First District) to review the merits appears at Appendix A to this petition and is unpublished, claiming to rely on earlier published opinions in other cases.

JURISDICTION

The Supreme Court of the State of California denied on February 19, 1997, petitioner's timely petition for a writ of review (certiorari) following the decision of the Court of Appeal.
The jurisdiction of this Court is invoked pursuant to 28 U.S.C., §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This petition and the underlying appeals and case implicate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, as well as State of California Rules of Court promulgated by the Judicial Council of that State and having the force of lawas to legal and Court procedure.

It is undisputed that the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution guarantees procedural due process in State Courts, and for some time similar substantive due process guarantees have also been seen as emanating therefrom.

At the least procedural due process means following the statutes, rules having the force of law, and the procedures of law generally. In particular, this case it means observing the local precedent forgiving the first transgression per an appeal and the other precedents favoring deciding cases on their merits and not on technicalities.

The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution forbids the States from treating persons unreasonably differently and in particular from applying to some of them rules, regulations, and even statutes that have not been enforced generally, especially out of apparent retaliation.

STATEMENT OF THE CASE

In October 1971 petitioner's late parents and petitioner purchased the subject sixteen apartment Victorian style steel reinforced concrete building containing also a store and garage for seven cars and three exterior parking spaces. From 1980 until put out by order of State County Superior (trial) Judge Stuart R, Pollak, except during an appeal stay subsequently, members of the owners' family resided there.

In 1984, Respondent City through its City Atty sought to enforce inspection of the building as the last to be as part of an area wide inspection. Petitioner's late parents and petitioner opposed on privacy grounds and a stipulation in another case not to enforce such inspections pending final resolution that ultimately failed on the merits in the California Supreme Court years later of a legal challenge to the legislation authorizing such. Nevertheless, the City abused its prestige in the local Courts and obtained entry by a last minute *ex parte* withdrawal of a writ of mandate and stay and clever timing before owners could legally obtain stay relief, as they had several times before.

As a result of the inspection, Respondent City cited owners for several minor technical Building Code violations based largely on disputed dates of installation of when certain improvements had been installed, but failed to enforce its citation.

In 1985, Respondent City cited and sued for injunctive relief owners for a malfunctioning central fire/smoke alarm system designed to special City specifications. Prior to and during the citation and lawsuit, owners had hired the manufactuer's service representative to repair such, but such repairs did not last until an independent former employee of the manufacturer turned repair contractor revealed that premature relay failure was the cause and repaired such correctly and lastingly. When owners defended and ultimately prevailed on technical issues, Respondent City attempted to join the other citations, was initially allowed to do so, but finally was denied and owners prevailed on the original lawsuit, when City sucessfully moved for its dismissal.

Respondent City then immediately refiled and served an injunctive proceeding to enforce the other citations. It did such even though that required skipping over cases with much higher priority in its system of evaluation and prosecution. The prosecution of this new proceeding was often spitefully pursued, progress rarely being conceded when reported by Inspectors and the status of the building often being mispresented.

On January 10, 1992, Respondent City obtained from Judge Stuart Pollak, who had never participated in the case before, the summary appointment of its nominated receiver to correct Code violations via a motion supported only generally by stale Inspector affidavits and opposed by owners' affidavits, raising triable controversial issues of fact and thereby defeating summary adjudication/judgment and their statement that a late inspection showing substantial compliance would

be had and offered at hearing. On January 9, 1992, a City fire inspector signed off on a list of fire violations and gave a copy to petitioner after accompanying him to the neighborhood copying store. The Building inspector had also signed off substantially on his list and promised a copy to petitioner at the Court hearing, where he would also testify thereto. Nevertheless, the City's attorney failed to mention any of this, Judge Pollak would not let owners or their attorneys speak, and at the order of the City's attorney the promised copy was not furnished. Subsequent efforts to bring this to the attention of the Court were all denied summarily - indeed, since Judge Pollak took over this case, there has never been a hearing where extensive argument was heard or witnesses could be presented or cross-examined, except in two instances, 1) a summary contempt of Court proceeding wherein petitioner was found in contempt for repainting parts of his apartment, etc. (punishment: fifteen days in a County Jail stipulated in Federal Court to be overcrowded and in violation of health and safety and sanitary standards - released eventually via granted writ of habeas corpus) after the then Chief Building Inspector, who was under investigation for corruption, reluctantly, but finallly emphatically testified that nothing was substantially amiss at the subject building, and 2) a ten minute very limited examination of first receiver as to his account claims, conceded to appear exaggerated and unnecessary by Judge Pollak, but nevertheless chargeable to owners becauseof their impertinent inquiries into that receiver's associations with his attorney and the supervising Deputy City Attorney for that case and improper ex parte communications and overly expensive amateurish procedures when much cheaper professional alternatives were commonplace.

Unbeknownst to owners and their attorneys until much later when brought to their attention by newspaper reporters, supervising Deputy City Atty David Fox had nominated his good friend of twenty years standing, Richard Riley, to be receiver, and Riley had hired David Fox's brother, Gregory Fox, himself a recent former Deputy City Atty., as the receiver's attorney. Neither Respondent City nor receiver, nor Judge Pollak, who apparently was aware of the former employment status of Gregory Fox, ever mentioned such to owners or their legal representatives.

When the survivng owners (mother and son) declined to pay in cash without bond receiver $213,000 as general contractor to accomplish repairs, he retaliated and sought and obtained an order excluding petitioner from the building. Riley claimed to have sought institutional and private financing to no avail, because of the then pending appeal of his appointment [but also probably also because of the unsupported by verifiable documentation of his expenditure necessity and reasonableness of amount repair claims].

On September 25, 1992, Judge Pollak ordered, *inter alia,* receiver Riley to furnish the parties and the Court with copies of the bids of

contractors supporting his claimed total expenses for repairs, denied his informal earlier and explicit requests to serve as general contractor as creating a conflict of interest, and ordered him to meet and confer with the parties.

The next day Riley and Francine Rahn, petitioner's girlfriend with a history of mental illness and drug abuse whom Riley had apparently promised to let her remain in the premises despitte the growing opposition of co-owner Rose Shers, told the San Francisco Police that petitioner had threaten the lives and limbs of Judge Pollak, Deputy City Atty Tollefson - Meek, and Riley and his family. Petitioner was subsequently arrested a few days later, denied a bail reduction, and required to post a bail of $1,000,000 to obtain his release from the condemned jail for which the City has been fined millions of dollars in civil cotempt fines by the District Federal Court. City Atty Louise Renne made a telephone call to the Police inspector working on the case urging continued prosecution. Subsequently, when owners re-obtained possession of the subject building via an appeal stay of Riley's appointment, Rahn offered to recant her earlier testimony in exchange for a "settlement of all issues," and Rahn's corroborator, an ex-felon and drug abuser also recanted without payment. The case against petitioner had evaporated and was settled with a plea of nolo contendere to vandalism, for which no factual basis existed and the Court demanded no certification of.

Riley resigned September 30, 1992, in a telephone call and letter to the City, and Judge Pollak was so informed by the City ex parte. He never furnished his supporting bids.

Judge Pollak was informed by the Police of the allegations that petitioner had threaten the lives and limbs of him and his son, and Pollak apparently took these seriously enough to warn his courtroom staff and have his bailiff search petitioner upon his entry into the courtroom and even stand with his hand over his revolver while petitioner and his brother, a lawyer reprsenting thier mother, Rose Shers, urged an ex parte motion in open Court.

Rahn resisted eviction and tried to keep petitioner out of the building under groundless claims of potential domestic violence. When the later failed and petitioner and his mother obtained fully possession, Respondent City delayed issuing new permits for claimed repair work.

On November 19, 1993, Respondent City obtained the summary appointment by Judge Pollak of a successor to Riley as receiver. Owners had opposed the motion therefor on procedural grounds, lack of jurisdiction, and adduced conditionally if jurisdiction ultimately be had, the only bid by an at arm's length State licensed contractor showing the maximum conceivable work would cost no more than $53,000, although the most probable need was none, the City having refused to specify and Judge Pollak having approved that refusal what it claimed needed to be done. The only affidavit either in support or in

opposition was in owners' oppositions and certainly made those issues controversial and not susceptible to summary adjudication, unless one took the improper position that the unverified written word of a Deputy City Atty was automatically superior to anyone else's affidavits. The successor receiver, Floyd L. Farano, a party herein, was at all times resident and did business in Anaheim, California, approximately 500 miles from the subject building. He had no local representative. Prior to becoming receiver, he had variously reported as being general legal counsel and/or office staff manager to former United States Senator from California John Seymour.

In early 1993, Riley threatened to sue the City for misleading him about the ease of obtaining financing and otherwise via ex parte communications improperly directing his work so as to expose him to financial risks and expenses. Neither owners nor their attorneys were informed of these threats and the subsequent negotiation by Riley or the City or anyone representing them. Rather, the following details came to light from third persons and from log entries presented to the Court. City Atty Renne and Riley settled his claims for payments totaling at least $99,000, and apparently also agreed that such would be contigent on Riley and the City getting Judge Pollak's approval for such as advances on legitimate receivership expenses chargeable as liens against the subject building, which except for a small loan balance in the amount of $25,000 and other small liens, was free and clear. Pollak granted Riley's motions for approval of expenses and granted the City its liens. It was also apparent at the time of these opposed hearings that Riley had embezzled temporarily monies given him by the City to settle claims of vendors who themselves had threatened to sue the City. During the entire period of the two City nominated receivers appointed by Judge Pollak, not a single utility or other expense of operation of the occupied building was paid by them; owners had to pay these entirely themselves, lest adverse consequences ensue (the one exception occurred in March 1994 when successor receiver Farano embezzled rents from a tenant he had terrorized into paying him and when initially owners demanded that he apply such to utilities' bills, he threatened in writing to have the building torn down if owners persisted in demanding such payments or accounting - well placed telephone calls to the City Atty's Office to the effect that owners would no longer pay such utilities bills, that the supplier would be shutting off service the next working day, that owners and tenants would invite newspapers and televison reporters to witness such and would explain how their rents disappeared, etc. brought telephone calls from the City Atty's Office and receiver Farano within two hrs. offering to resume stall settlement negotiations this time in good faith and for Farano to pay up such funds to owners).

Successor receiver Farano ignored the building until December 17, 1993, when he made a cursory inspection and attempted to collect

rents. Another similar cursory inspection and attempt to collect rents occurred on January 6, 1993. During both he had been accompanied by a Deputy City Attorney. Farano also claims that he and a Deputy City Atty secretly inspected the building while it was in the possession of owners - a trespass and if for the purpose of commiting a felony such as fraud technically a burglary.

Petitioner and his mother's attorney jointly in a letter dated January 6, 1993, to Farano objected to his conduct and neglect and urged legal arguments in favor of the proposition that his appointment was stayed by operation of law.

On January 18, 1993, owners filed their Notice of Appeal from the order appointing Farano, thereby by operation of law staying that order. The California statutory law of appealability requires that certain designated interlocutory orders (such as the appointment of a receiver), final judgments, and all post judgment orders be appealed from within fixed periods of time, or such right to appeal be lost as to the issues therein. California case law further interprets a final order as to a collateral matter, that is, an final order requiring the payment of money or the performance of an act, that could in a separately maintainable action have resulted in a final judgment, be deemed a final judgment for the purposes of appeal. The final determination of the issues in appeal from the interlocutory order is final as to the entire case, except in instances of the gross miscarriage of justice. In that latter event, such issues may be relitigated. Thus, there are "traps for the unwary," and the "prudent laywer should file an appeal whenever he is uncertain, lest he loose that right later." Accordingly, petitioner and his mother's attorney filed various appeals of apparently appealable interlocutory orders and were never sanctioned for or found to have filed frivolous ones. The subject herein opinion of the State Court of Appeal, even after a petition for rehearing, denied, pointing out such errors, misstates its earlier opinions and the facts in the record. Judge Pollak ignored the law of appeal stays and even tried to rule on the appeal itself.

As Farano has admitted as of many months later in open Court that he held discussions beginning in late January 1993 to sell the building to a buyer whose identity and other circumstances have been withheld from only owners and their attorneys.

On January 27, 1993, Farano reported that the building needed $216,000 of repairs, plus $51,000 of his administration. These figures grew subsequently to $367,000, to $379,000, to $479,000, and finally to $879,000, each time in response to owners' offers to negotiate. farano has never produced an at arm's length licensed contractor's bid to support such figures. Instead, after ordering the sale to the secret to owners only - its identity was disclosed to the City and **Judge Pollak, who in lieu of permitting cross-examination** of qualifications of what ultimately turned out ot be a limited partnership whose employees, contractors, and assets had at least in several instances been

misrepresented in writing to owners and the Court, **vouched for them** in open Court, Judge Pollak ordered Farano to provide justification, and Farano furnished a simple statement of his belief. Farano billed about $10,000 for his business partner's estimates of needed work, when ordinarily contractor's bids for such work are given for free if the contractor believes that there is a good faith solicitation of work.

Farano also moved under an overly broad as contended by petitioner newly added provision of Calif. statute, §391, authorizing the following for acts of interference to declare petitioner a vexatious litigant barring him from asserting any defenses for signing the aforesaid letter to Farano complaining and objecting to his work. The underlying theory of Farano, that petitioner could sue Farano elsewhere, was without merit, as Calif. law provides for the co-ordination of receivership cases with cases involving claims, etc against the receiver. Judge Pollak, however, granted the order only as to new litigation not having as its subject matter the subject building and regarding petitions for writs as appeals or extensions thereof.

Contrary to California Code of Civil Procedure, §568.5, providing for the Sheriff to conduct competitive bidding with upset bidding in Court and Court confirmation of sales price according to probate sales, Judge Pollak authorized Farano to sell the building for a negotiated price after appraisal to be paid for by the January 1993 prospect praised by Judge Pollak in open Court. (The issue of whether the CCP, 568.5 procedures and a final confirmation order were a prerequisite to the appealabilty of an order for sale was litigated earlier in an appeal wherein Respondent City successfully argued for dismissal as premature on that basis. It then sought in the subject appeal to be heard on the opposite position, arguing that a anomalous local precedent not binding on the subject Court of Appeal should prevail).Farano introduced the two Court appointed appraisers to the prospective purchaser as paying their bills and having special information for them, while falsely informing them that they were to have no contact or to disclose anything to owners or their attorneys. One appraised the building as being worth $622,000 after repairs, if any, the amount or need for which, he demurely declined to estimate or advise independently, accepting as stated his employer's (prospective purchaser's) estimate of $349,000 and allowing him "an enterpreneurial profit" to arrive at a then current value of $195,000. The other balantly found no value at all. In contrast owners' estimates ranged between $800,000 and $1.7 million, depending on the exercise of rights under rent controls and use. Contrary to Judge Pollak's earlier order providing for a third appraisal if the two disagreed by more than 10 per cent, he ordered instead Farano to negotiate a sales price. Farano " on his own "adjusted" the upper tainted appraisal to $125,000, proposing to have $15,000 paid to Rahn nominally in release of a disputed child

support claim lien and the balance to the Court. He also proposed that the Court grant him a lien for his fees and expenses for hiring his son as his attorney even though Farano is a member of the Bar and did most of the arguing and his business partner as an estimating contractor priority before all other liens including those of the City, and finally that the Court so order the building sold [without CCP,§568.5 protections, including upset bidding, public competitive auction conducted by the Sheriff, and confirmation]. Judge Pollak and Farano disparaged the alternative bid of the only persistent bidder, who ultimately offered $500,000, on such grounds as his other real estate holdings wre badly managed as to appearance by the management company later hired to manage the subject building, but an impressive building in the City was owned by the prospective purchaser when it fact it was managed by a firm prospective purchaser through Farano claimed it would hire to manage the subject building.

On June 16, 1995, Judge Pollak granted and signed the final sale order, abrogating the priority of all liens, including those of parties joined only by a procedural insufficient notice of motion, to whose service several have since objected, as did petitioner. Owners beat Farano to the clerk's office to file their appeal, thereby again staying by operation of California statutory law any sale.

Farano and Judge Pollak ignored such stays and objections. Farano successfully moved for the disbursement of all the proceeds from the "sale" to him, and the City filed a "Supplemental Brief" urging, as suggested by Judge Pollak earlier, that the amounts of the City's now essentially worthless sold out (if such sale be valid) liens be assessed against owners as excess expenses caused unnecessarily by their defending themselves. The City's "Supplemental Brief" stated that petitioner had been arrested for threatening Judge Pollak and punished therefor and suggested that such assessment would also be proper for the same reasons.

All previous objections for cause under the special procedure of California law and yet another one have failed. However, California law also provides that such issues of disqualifying prejudice and bias remain open on appeal of the appealable affected final orders or judgments.

Judge Pollak granted the City's request as well as one for a deficiency judgment by Farano's atty. made orally contrary to California law by merely him saying in effect "me too" at the oral hearing.

In January 1995, frustrated by the apparent lack of good faith by the City Atty's Office in settlement negotiations, petitioner, who not being a member of the State Bar, was free to get in touch with the Dept. in the City in whose name the case was being prosecuted. He settled it in principle with a then person in authority, who later left.

The March 1995 offer by Farano and Marie-Victoire was soon sabotaged by them. New City inspections were ordered and defects

were alleged that had been previously been approved and that no building the area had been forced to meet. Marie-Victoire actuually asked the Inspectors to cover for her and Farano, after petitioner had compelled over his strenuous objection an inspection by the only at arm's length State licensed contractor to furnish a bid, which has been included in the record. On May 3, 1995, Marie-Victoire again denied all settlement efforts, but on May 5, 1995, after entreaties by petitioner to the head of the newly created by voter initiative to curb such abuses as herein Dept. of Bldg Inspection, the person designated by the Superintendent settled the case according to the owners' written offer. Marie-Victoire prepared her formal motion for Court acceptance thereof, delaying with various excuses, and sending such to petitioner on June 29, 1995. On June 30, 1995, Farano purports to have recorded the deed transfer ownership, despite the appeal stays and the client of the City Atty settlement to the contrary.

Owners filed appeals from the various appealable orders lest they loose their rights to later , defended against motions to dismiss.

The first appeal from the order appointing a receiver survived two motions to dismiss, resulted in a published opinion denying the first motion (opinion later depublished), but failed even though oral argument portended otherwise. Most issues raised therein were left unresolved.

The next was precautionary and withdrawn by appellants.

Thereafter owners appealed the appointment successor, prevailing in a partially published opinion on jurisdiction, but loosing on their lack of necessity or qualifications arguments, although necessity issues were not fully considered and the stay issues were disparaged.

Heard together was the appeal from the order declaring petitioner a vexatious litigant for co-signing the objections letter and requiring permission to file new subject litigation. The unpublished opinion there contradicted the holdings in the earlier opinion regarding the efficacy of the appeal stays and continued a pattern of misstatement.

The subject appeals were never heard on their merits, although the ostensible dicta in the order and opinion dismissing them demonstrates much misstatement of the facts as well as of law, including contradicting the primary rule of receivership, that the receiver is a fiduciary, owing such obligations to the Court and the parties to carry out the orders of the Court while protecting the interests of the parties against each other and against others.

When the Court of Appeal showed its readiness to begin consideration of the briefed appeals, responded to its form at issue letters for the subject later consolidated appeals in which the names of the Justices assigned to the panel of the Division which will hear the case are disclosed (presumably to allow for early recusal motions) and other scheduling information is requested by, *inter alia*, suggesting the consolidation of various pending appeals involving the same or

overlapping or dispositive issues. The particular form letters failed to contain the check marks showing which Justices would hear the appeals, and petitioner believing that grounds for recusal might exist, requested that information on those grounds.

Instead, the Court of Appeal consolidated all the pending appeals, misstated the facts and applicable law so badly that even a first year law student should give pause to wonder, disparaged and tried to intimidate appellants, dismissed two appeals for the failure to comply with its prior ambiguous order requiring stricter compliance with a rule for citation never enforced for some time, but resurrected for this occasion, dismissed another appeal whose brief was filed before the order requiring compliance and therefore could not have violated such and when such dismissal was contrary to the rule and case law cited by the opinion dismissing the appeals and dismissed the fourth related appeal again for a first time transgression when the rule and case law cited and explained by the opinion strictly forbids such, in addition to applying a sanction to screen appeals by appellants.

Moreover, the Court of Appeal's cited authority conflicts with that of another Court, whose opinion, unlike the subject Court's one, is consistent with much case law favoring deciding cases on their merits, as was pointed out to the subject Appellate Court in petitioner's Petitition for Rehearing to that Court. Also not mentioned in the opinion is that all the subject appeals were fully opposed by Respondents, who furnished detailed appendices and references correcting any errors or omissions by appellants as to citations to the record.

The opinion states that Judge Pollak is a "most able jurist," without supporting citation to authority, but fails to disclose that Judge Pollak has sat on the same panel in the same Division by designation as a substitute Justice several times in the recent past and is personally and professionally known to his former Superior Court now Justice herein Kline and to now Justice Haerle, and that other Divisions of the same Court have characterized his performance in other cases as much wanting. *Cf. Barnes vs. Wong* (1994) 33 Cal.App.4th 390; 39 Cal.Rptr.2d 447.

Appellants filed a timely petition for rehearing conforming to the format limitations imposed by the order pointing out the material misstatements and incomplete statements of fact and law in the opinion. The Court of Appeal denied the petition without comment.

On September 15, 1995, owner widow Rose M. Shers died of congestive heart failure exaccerbated, if not brought on by this litigation - that is, of a broken heart having seen her family home confiscated in 1938 in Vienna, Austria, and now experiencing a similar, though more subtle process here in the United States.

Petitioner is of ill health, suffering from diabetes and complications, including osteoarthritis of both knees and shortness of breath, and prays for the indulgence of this Court in hearing this matter. As a result

of this litigation, petitioner now qualifies to proceed *in forma pauperis* in the State of California Courts and although technically may not qualify under Federal standards cannot liquidate his real property because of liens from this litigation.

REASONS FOR GRANTING THE PETITION

The Questions Presented and the history above of the case are fairly self-explanatory of how due process and justice were abused herein, and public confidence in the Calif. judicial system has been undermined even more. In *Liljeberg* or*Tumey*, the landmark precedents of this Court, the appearances of conflict of interest, potential unfairness, and injustice were much less than here.
In this case every abuse of method has been employed to avoid dealing with what amounts at the least to the grossly irresponsible behavior of Judge Pollak and the City Atty's Office.

Of course, the dissipation of the product of the work of two generations of petitioner's family is very important to petitioner and should have some bearing on the decision herein.

But more generally, the foundations of this country are based on the notions that every person is entitled to the fruits of his own labor and that a man's home is largely inviolate (as Pitt the Elder said when asked what the English law of search warrants was, "the wind may blow through its cracks, cattle and swine and goats may wander through unimpeded, but the King [government] may not enter, for be ever so humble, a man's home is his castle"). Petitioner has been deprived of his home and possessions without the opportunity 1) of trial, 2) to confront witnesses for and against him, and all those other elementary rights that make up fair play and justice. This has been done by narrow sophistic parsing of the great precedents of this Court and other principles of law and begs for this Court to instruct the lower Courts as to what is important in dealing with the public, which already holds the judicial system in low esteem for obscurantism and fundamental injustice clothed in contorted scholastic parsing.

Second, if as Justice Stevens writing for the majority pointed out in *Liljeberg*, regardless of the arcane reasons by which lawyers may rationalize or justify judicial acts, "people will talk" and the reputation of the judiciary requires in effect that it be above the suspicion that a mere appearance might engender. The history related above is far worse and could do much more damage to the reputation of the judiciary. That the California Courts are still reeling from the ultimately futile efforts of the former Chief Justice to rationalize accepting a $12,000 gift from a litigant before his Court, while a lowly Municipa;l Court judge, when finally forced to answer in public after voters initiative and legislative statute compelled a public hearing and barred judges from granting or ordering injunctively private hearings, defended her acceptance of

$1,500 loans from litigants whom she never paid back as being more affordable and therefore democratic, and the Calif. Supreme Court appears ready to overrule a Court of Appeal holding that the acceptance of $13,000 by the District Attorney in campaign contributions is not insignificant and requires his recusal when dealing with the contributor, does not mean that petitioner should suffer the tremendous losses in the underlying case and that years should pass before the Calif. Supreme Court finally, if ever (cf. 34 yrs. to heed the warning of Justice Harlan's 1957 opinion and resulting in the execution of the appellant who now is legally vindicated), succeeds in setting the State in order.

The carelessly reasoned and confused at the least opinion of the Court of Appeal suggests apparently that it was motivated by prejudice and bias instead of logic. It misstates the facts, states as facts propositions that even respondents have never alleged or argued, and ridicules as fantastic pertinent under the precedents of this Court facts admitted by respondents. What the opinion essentially maintains is that a second defective brief in one appeal justifies under Calif. law dismissing an earlier appeal in which only a first defective appeal has been filed despite the clear rule change and case law precluding dismissing an appeal for a defective brief and that by the acts referred to in the previous sentence above, ignoring better reasoned authority in California and related law that matters should be decided on their merits, dismissal is permissible. To justify such the opinion further departs from established law by making a receiver an agent of the party nominating him rather than a an officer of the court appointing him with a tripartite fiduciary duty to the court to enforce its orders and to the partise to protect their interests otherwise.

Inasmuch as appellate courts defer to the discretion of trial (no formal trial was held in this case - all orders were summarily granted even in the absence of supporting affidavits or evidence) courts, even the mere appearance of prejudice or bias must be avoided and its mere appearance is a structural defect of Constitutional dimensions. The same applies to the appellate courts. If the wife of Caesar must be beyond approach, so must Caesar, his employees, his soldiers, and even his associates.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

PERRY S. SHERS, Petitioner, *In Pro. Per. / Pro Se.*

Dated: July 29, 1997
Oakland, Calif.

APPENDICES

APPENDIX A: OPINION OF THE STATE COURT OF APPEAL DISMISSING APPEALS FOR FORMAT, ETC. TRANSGRESSIONS

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff and Respondent

v.

PERRY SHERS, ET AL.,

Defendants and Appellants.

[FILED
Court of Appeal
First App Dist

NOV 21, 1996

RON D. BARROW,
CLERK
BY_____
Deputy

A070697,
A071314,
A073550,
A074262

(San Francisco County Super. Ct. No. 903465)

I.

These are four related appeals, the seventh, eigth, ninth and tenth in a long-running dispute between appellants on the one hand and the City and County of San Francisco (CCSF) and a receiver appointed by the San Francisco Superior Court on the other. The dispute revolves about the prior ownership by appellants pf certain apartment property at 511

Leavenworth Street, San Francisco, the lengthy, costly and time consuming steps taken first by CCSF and then by two successive receivers to force appellanst to rectify numerous municipal code violations on that property and then, when that could not be done, to sell the property and account for the costs of the sale and the receiver-enforced code compliance.

By our order of June 26, 1996 (June 1996 0rder), we consolidated the first two numbered appeals. By this order we consolidate with them and with each other, the last two numbered cases. For the reasons stated below, we dismiss all four appeals and, as a sanction for appellants' repeated and egregrious violations of both (a) California Rules of Court, rules 13 and 15(a) [1] and (b) our June 1996 order, direct that the Clerk of this court accept no more appeals from these appellants without prior express permission of this court.

II.

For seven years, beginning in 1985, CCSF authoritie struggled to have appellants Perry Shers and his mother, Rose Shers (together, the Shers or appellants) rectify over 50 municipal code violAtions on thier property. On January 10, 1992, after three judgments ordering compliance, fifty contempt hearings for non-compliance, and six findings of contempt resulting in fines and incarceration, the superior court appointed a receiver to complete the necessary work. Thereafter, and not counting the appeals encompassed by this order, the Shers filed six separte appeals rom orders regarding the receivership. First they appealed the appointment of a receiver to the property. (*City and County of San Francisco v. Shers* (June 16, 1993) A057755.) We affirmed. The Shers appealed an order approving the receiver's fees and costs and denying a new trial on the issue. (*City and County of San Francisco v. Shers* , A061276.) They subsequently abandoned that appeal. The Shers next appealed an order appointing Floyd Farano as successor receiver to replace the original receiver, Richard Riley, after Riley's resignation; we affirmed that order in a partially published opinion.(*City and County ofSan Francisco v. Shers* (1995) 38 Cal. App.4th 1831.) The Shers then appealed the superior court's denial of their motion to terminate the receivership. (*City and County ofSan Francisco v. Shers* , A066031.) We granted CCSF's motion to dismiss on November 9, 1994. The Shers appealed from the court's order approving the receiver's plan for sale of the property. (*City and County ofSan Francisco v. Shers* , A067150.) We granted CCSF's motion to dismiss on March 8, 1995. The Shers' sixth appeal was from an order of the superior court declaring Perry Shers to be a vexatious litigant

1. All further references to rules are to the California Rules of Court.

under Code of Civil Procedure section 391, subdivision (b)(3), and prohibiting him, pursuant to section 391.7 of that code, from filing any new litigation in propria personna without prior leave of the court; we affirmed that order in October 1995. (*City and County ofSan Francisco v. Shers* , A067102.)

Appeals Nos. A070697 and A071314, the first two of the four involved here, challenge two successive orders of the superiuor court, a June 1995 order authorizing the property to be sold by the receiver and an August 1995 order relating to the disbursement of the proceeeds of that sale. Appeals Nos. A073550 and A074262 are from September and October 1995 orders of the superior court assessing receivership expenses paid by, respectively, the receiver and CCSF.

As noted above, our June 1996 ordrer consolidated the two low unumbered cases, i.e., those relating to the sale and the disbursement of the proceeds thereof. We also did two other things via that order. First of all, pursuant to rule 18, we struck appellants' opening briefs in both cases and their reply brief in No. A071314, but granted them leave torefile those briefs (albeit in the consolidated case) within specified time limits. In doing so, we expressly noted that the basis for that portion of the order was the failure of those briefs "to comply with [r]ules 13 and 15(a)." Second, we went on in a later paragraph of that order to state unequivocally what we exepected of appellants thereafter.

"4. Appellants' attention is directed to the text of the applicable Rules on Appeal, including without limitation the following provisions of [r]ules 13 and 15(a):

"Rule 13:'The statement[of the case] shall be accurate and confined to matters in the record on appeal.'

"Rule 15(a):'The statement of any matter in the record shall be supported by appropriate refernce to the record.'

"Appellants' continued failure to comply with these and other provisions of the Rules on Appeal may result in a dismissal of either or both refeneced appeals (see this court's opinion in *Berger v. Godden* (1985) 163 Cal.App.[sic 3d]1113, the imposition of sanctions (see [r]ule 26(a), California Rules of Court and *Alicia T. v. [County of Los Angeles]* (1990) 222 Cal.App.3d 869, 886), or both."

On August 12, 1996, the Shers refiled their "Appellants' Joint Opening Brief" in those two cases as well as an appendix thereto. two days later, the Shers filed their opening brief and an accompanying appendix in appeal No. A074262; their opening brief in No. A0733550 had been filed on June 18, 1996, eight days before our June 1996 order.

III.

First and foremost, it is obvious from an even cursory comparison of the Shers' August 12 filing in the two first consolidated cases (entitled "APPELLANTS' JOINT OPENING BRIEF") that what they

have done is simply splice together, with few if any changes, the two separate "STATEMENTS OF FACTS" sections from the opening briefs they filed before the cases were consolidated, i.e., *the precise briefs ordered stricken by our June 1996 order*.[2] Although we have not performed a word-by-word comparison of the three briefs, it would seem that as far the "STATEMENT OF FACTS" portions are concerned, the briefs are 99% identical. Thus, it is quite clear that the notation in our June 26 order that the earlier briefs were "stricken from the record for failure to comply with [r]ules 13 and 15(a) and our later citation of the key language of those rules was utterly, completely, flagrantly and contemptuously ignored by the Shers.

Separate and apart from that consideration none of the briefs filed by the Shers in these cases comes within a country mle of compying with the two quoted Rules of Court.

Eleven years ago, we stated our view of the law applicable in precisely this situation. In *Berger v. Godden* (19985) 163 Cal.App.3d 1113, 1117-1119 (*Berger*), we had (as here) stricken an appellant's opening brief for non-compliance with rules 13 and 15. There (as here) we allowed the appellant to refile his opening brief, but specifically warned him that, in the event of future non-compliance with pertinent rules, "'this appeal shall be dismissed.'"(*Id.* at pg 1117.) That appellant, as these appellants, ignored our final warning and filed a patently non-complying brief. We ruled that the appeal could be and was dismissed because, among other reasons, "the failure of appellant to file a brief in conformity with the rules after his initial brief was stricken for noncompliance with the rules ...." (*Ibid.*)

In doing so,we reviewed the history of the pertinent rule, rule 18, and noted that, in 1937, that rule was amended to delete language expressly authorizing dismissing of An appea;l asa sanction for filing a defective brief. We concluded that, "with respect to an initial filing of a defcetive brief," dismissal was no longer a permissible remedy. (*Berger, supra*, 163 Cal. App.3d at pg 1118.) We held, however, that matters were different in the situation presented there (and here): "We hold that while rule 18 does contemplate that an appeal not be dismissed because a party has filed one brief which fails to comply with the rules, nothing in the rules precludes dismissal for failure to file a brief substantially in compliance with the rules after the court has made an order striking one nonconforming brief with leave to file a new brief. Obviously implicit in such an order is the directive that the new brief comply with the rules. The order in the present case expressly provided that if a new brief were not filed as specified, the appeal would be dismissed. When a new brief substantially fails to comply with the

2. These briefs were filed on January 10 and April 9, 1996.

rules, as in the present vase, the appellate court has both statutory and inherent power to dismiss the appeal. [¶]'It is beyond dispute that "Courts have inherent power, as well as power under section 187 of the Code of Civil Procedure, to adopt any suitable method of practice, both in ordinary actions and special proceedings, if the procedure is not specified by statute or by rules adopted by the Judicial Council." [Citations.]" As no statute or rule specifies a procedure to be followed upon the striking of an initial appellant's brief and the filing of a second (or subsequent) brief which fails to conform to the rules of the court governing the preparation of briefs, this court may, in its discretion, dismisss an appeal in which such an appeal is filed"[3] (*Id.* at pg.1118 - 1119.)

That opinion, one explicitly cited to the Shers in our June 1996 order, governs here for there is no question but that all three of appellants' briefs utterly fail to comply with rules 13 and 15 in several particulars. We shall deal with those briefs (and their related appendices) in the order they were filed.

The first to be filed was on June 18, 1996, in appeal No. A073550. As noted, this filing preceded our June 1996 order by eight days. The appeal concerns an October 1995 order of the superior court assessing property sale costs incurred by the receiver against the Shers. The brief is 15 pages long and three of those pages contain a section entitled "STATEMENT OF FACTS." Contrary to the express mandate of rule 15(a), there is nary a "reference to the record" anywhere in those pages. Which, a cynic might observe, is understandable when one refers to the sole supporting "record" filed in that case, the "APPELLANTS' JOINT APPENDIX TO AOB IN LIEU OF REPORTER'S AN CLERK'S TRANSCRIPTS" filed the same day. Aside from a copy of the docketing statement required by this court, that document contains only three documents: (1) a copy of the superior court order appealed from, (2) an Abstract of Judgment apparently served and filed by the receiver (although the copy in the "record" shows no filing stamp) reflecting the the same sum assessed by the superior court's October 1995 order, and (3) a copy of a "supplemental" memorandum of points and authorities apparently filed *by the Shers* (but, again showing no filing stamp) in connection with the dispute over the assessment of costs and expenses of the sale of the Leavenworth Street property. *No other pleadings filed with the superior court relating to this issue are supplied.*

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3. To the same apparent effect, and relying on our decision in *Berger, is Childs* v. *Paine Webber Incorporated* (1994) 29 Cal.App.4th 982, 986. (See also *Bernard* v. *Hartford Fire Ins. Co.* (1991) 226 Cal.App.3d 1203, 1205.)

The next brief filed by the Shers was submitted on August 12, 1996. It will be recalled that this was in the now-consolidated two low-numbered cases (dealing with the order of sale and the order disbursing the proceeds thereof). This brief was filed by the Shers in lieu of two opening briefs (and one reply brief) filed in the two cases before their consolidation and ordered stricken for non-compliance with rules 13 and 15(a) by our June 1996 order. As we have already described, upon examination it appears that this one August 12 brief is, for all practical purposes, simply a "spliced together" replica of the two stricken opening briefs in the unconsolidated cases. In any event, accompanying it was a 300 page appendix.

Approximately 15 of the 41 pages of this brief fall under two separate headings of "STATEMENT OF FACTS." But exactly twice in these approximately 15 pages is there any reference to the 300 plus page appendix. The first is at pg. 2 where, after a statement of a totally irrelevant (to this appeal) "fact," there is a single citation to the appendix with the promising add-on: "hereinafter in the style 'AOA, 120:1-5.'" Four lines later appears an"[*ibid.*]" citation *following which there is absolutely not a single citation to the "record" in the case in the entire 39 remaining pages of the brief*! To put the matter succinctly, a clearer case of a violation of the quoted part of rule 15(a) is hardly imaginable.

The final brief filed by the Shers was their opening brief in appeal No. A074262; it was filed two days after the brief just discussed and less than two months after our June 1996 order. It dealt with yet another 1995 order of the superior court dealing with costs of the sale of the property. It is, again, effectively, contemptuous of our June 1996 order. In the approximately eight pages of a section entitled "STATEMENT OF FACTS," there is not a single citation to the 23 page appendix [4] filed with the brief.

There is yet another reason why we dismiss these appeals, and that implicates the other rule we cited in our June 1996 order, rule 13. The relevant sentence of that rule, which we quoted in paragraph 4 of our order, says: "The statement [of the case] shall be accurate and confined to matters in the record on appeal." It is elemental that this rule requires that a party supply the appellate the appellate court something more than just a recitation of its contentions or facts in the record favorable to it. (See, e.g., *Sprague* v. *Equifax, Inc.* (1985) 166 Cal.App.3d 1012, 1027-1028.) More importantly, at least for the present purposes, it

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4. That appendix contains copies of exactly four 94) documents, including the Shers' Notice of Appeal, a Notice of Election of Use of Appendix, etc., in support of that appeal, a threeppage superior court memorandum of points and authorities filed by CCSF counsel, and the identical Shers "supplemental" memorandum of points and authorities contained in the appendix to appeal No. A073550. Only the CCSF pleading shows a filing stamp.

emphatically does not permit a party to file a brief which contains immaterial, rrelevant or disrespectful material. (See *People* v. *Barry* (1957) 149 Cal.App.2d 646, 647.) These briefs, especially the two filed after our June 1996 order, are rplete with such material. [5] None of it, of course, is supported by anything remotely resembling a record citation.

It would gain nothing to cite all of the disrespectful, scurrilous and ad hominem characterizations which fill these briefs, but the following is a sampling: in their August 12, 1996, filing the Shers repeatedly attack the triao judge, the Honorable Stuart Pollak, a most able jurist of the San Francisco Superior Court, for having displayed "hostility" toward them from the beginning, as having had them searched for weapons because of alleged death threats to him by Perry Shers, and as being biased against them in his rulings and orders. The CCSF authorities fare no better: Perry Shers was supposedly excluded from his building by those authorities at the behest of a "former girlfriend" (of precisely who we are not told), one of its attorneys wrote a "secret letter" regarding the Shers' permit applications, and one of its inspectors was alleged to be "under investigation ... for abuses involving conflicts of interest and alleged extortion."

The two appointed receivers in the case fare worst under the Shers' diatribe, however: one or the other of them is repeatedly making "irregular" motions, trying to negotiate a settlement "secretly," "laughingly taunting Perry Shers ... that [he] would get no justice from Judge Pollak," charging "grossly inflated fees," arranging"sweetheart sales," racing undignifiedly" to avoid settlement, and ultimately converting "the proceeds [from the sale of the property] to himself."

The August 14 filing is, if possible, even more scurrilous. Various and sundry people are accused of being "cocaine abusers" or "drug abusers," or suffering "paranoia," of having "previous mental institutionalizations," etc.Judge Pollak is again pilloried by name for having "apparent malicious retaliatory spite" afgainst the Shers, and it is alleged that the property in question had been partially used "for prostitution and illegal drug abuse" while under CCSF control. And on, and on, and on. It almost goes without saying that the numerous ad hominem references have little if any relevance to the narrow procedural issues involved in these four appeals. Rather, they are an obvious, if not a tiresomely redundant, effcort by the Shers to portray themselves as nothing more than (a) folks who have no responsibility at all for their present predicaments and (b) victims of repeated conspiracies against them by miscellaneous evil people.

Neither this nor any other court has to put up with filings such as

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5. They are also replete with numerous mispellings [*sic*],typographical errors, and convoluted syntax.

these. We especially do not because of the explicit warningto the Shers in our June 1996 order. Accordingly, these appeals and each thereof are dismissed for repeated non-compliance with rules 13 and 15(a). Asa sanction for the continued violation of those rules, the Clerk of this court is directed not to accept any further appeals from these appellants in this or any related litigation without the prior written consent (via formal order) of the Prseiding Justice of this court. (See rule 26(a); Code of Civil Proc., §§391, subd. (b) and 391.7, and *Alicia T.* v. *County of Los Angeles, supra,* 222 Cal.App.3d at p. 886.) Any application by appellants, or either of them, for relief from this order must be by double-spaced letter of no more than four (4) pages in length.

_____
Haerle, J.

We concur:

_____
Kline, J.

_____
Lambden, J.

APPENDIX B: SUMMARY ORDER OF CALIF. SUPREME COURT DENYING PETITION FOR WRIT OF REVIEW OF COURT APPEAL OPINION AND ORDER

First Appellate District, Division Two, No. A070697
A071314/A073550/A074262
S058190

IN THE SUPREME COURT OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO, Respondent

v.

PERRY SHERS Et Al., Appellants

Petition for review DENIED.

SUPREME COURT
FILED

FEB 19 1997

Robert Wandruff Clerk

/s/ VB

Deputy

/s/ George
Chief Justice